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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/691,037 | 10/21/2003 | John F. McEntee | 10004031-23 | 7537 |

7590 09/12/2007
AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
P. O. Box 7599
Loveland, CO 80537-0599

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| EXAMINER |
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AFTERGUT, JEFF H

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| ART UNIT | PAPER NUMBER |
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1733

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| MAIL DATE | DELIVERY MODE |
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09/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/691,037 | Applicant(s) MCENTEE, JOHN F. | |
| | Examiner Jeff H. Aftergut | Art Unit 1733 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 14-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art or McKinney further taken with Maronian et al and Jacobs for the same reasons as expressed in paragraph 2 of the Office action 5-7-07 further in view of Miller (newly cited).

The references as previously cited suggested that those skilled in the art would have applied tension upon the layers prior to lamination but did not express that the tension applied to the layers was linear tension. However, it should be noted that the tension in a circular septum (or stopper) for a test tube would have been applied in the radial direction as one would have desired equal forces on the septum as the needle was being removed regardless of the location of insertion of the needle into the assembly. To further evidence that those skilled in the art would have applied the tension in the radial direction, the reference to Miller is cited. Miller taught that those skilled in the art at the time the invention was made would have incorporated a self sealing closure (a septum) formed from elastomeric material which included a portion of the layer which was in radial tension and an opposite surface portion which was in radial compression whereby subsequent to insertion of a needle, the elastomeric material was self sealing and additionally provided a wiping action against the needle during removal so that any material on the needle would have been wiped off of the needle. The applicant is more specifically referred to Figure 6 and column 3, line 59-

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column 4, line 32. The applicant is advised that one skilled in the art reading the reference to Miller would have understood that radial tension and radial compression were desirable as it would have allowed for the needle to be withdrawn and a self seal to take effect while at the same time any specimen on the exterior of the needle would have been wiped clean by the radial forces acting upon the needle during withdrawal. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the techniques of Maronian in the process of making a three layer septum of either one of the admitted prior art or McKinney wherein the layers would have been placed in radial tension and radial compression as suggested by Miller (in order to facilitate the desired wiping action for a circular septum) wherein the bonding takes place subsequent to stretching the exterior layers as taught by Jacobs. Applicant is referred to paragraph 2 of the previous Office action for a discussion of the dependent claims. Applicant is reminded that because applicant did not properly traverse the statements regarding what was common knowledge to the art in the first office action, these statements have been taken as admitted prior art and no affidavit under 1.104(d)(2) is deemed necessary by the examiner. Traversal after the final rejection is not timely. See MPEP 2144.03. It should be noted that regarding claims 19 and 26-27, the Office gave Official notice in the first Office action dated 2-24-06 (see pages 5 and 6, paragraph 4 of the Office action) and indicated in the Final rejection that applicant had acquiesced to the same (and that these features were thereby taken as admitted prior art), see pages 6-7 of the Final rejection dated 6-19-06. Applicant did not reply to this position again in the response with the RCE and in the first office action

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dated 5-7-07, the applicant was again advised that the subject matter was acquiesced and taken to be admitted prior art. The remarks made in the response dated 7-31-07 regarding this subject matter is not deemed timely as applicant has acquiesced the same previously.

Response to Arguments

3. Applicant's arguments with respect to claims 14-27 have been considered but are moot in view of the new ground(s) of rejection.

The applicant argues that the prior art does not teach the application of radial tension to the assembly, however the applicant is advised that those skilled in the art would have applied radial tension in light of the suggestion to do so by Miller. Applicant argues that the finished assembly is in tension and compression and that the prior art finished assembly is in a relaxed state. The applicant is advised that: (1) the claims are not commensurate in scope with the argument in that the claims do not require that the finished tensioned layers remain in tension and impart compression upon the untensioned layers therein. It should be noted in this regard that applicant did not dispute the position taken by the Office regarding the specific amount of tension applied in the assembly (5-1000 newton/m) and one making a septum would have clearly optimized the amount of tension in the layer in order to achieve the resulting self sealing assembly. (2) the prior art and in particular the reference to Maronian suggested that those skilled in the art would have tensioned the layers therein and followed this with a bonding operation (see Jacobs as well). Once one applied tension and allowed the tension to remain in the layer during the adhering step followed by allowing the layer to

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relax, one would have understood that the adjacent layer would have gone into compression in order to attempt to balance out the tension forces in the layer and that relaxation of the held tension would NOT have removed completely the tension in the layer rather it would have been balanced out by the compression that the adjacent layer was placed under and that as such the tensioned layer would have remained under tension in the assembly and the adjacent layer to the same would have been placed into compression.

Regarding the specific dependent claims 19 and 26-27, the applicant is advised that there was not express rebuttal for the Official notice previous twice given to applicant and as such the applicant has acquiesced this point. Namely, the various means to place the elastomeric material into compression as well as tension were taken as conventional to the art and one skilled in the art would have been expected to select from the commercially and well known ways to achieve the same. Applicant is referred to MPEP 2144.03 for information regarding the same. Since applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner is hereby clearly indicating that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate.

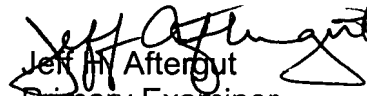
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
September 10, 2007